

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

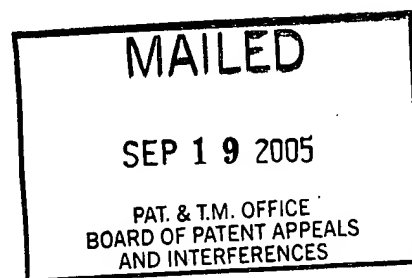
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte BRETT HAARALA, WILLIAM SHAW and CHRIS DAVEY

Appeal No. 2005-1034
Application No. 09/690,473

HEARD: June 7, 2005



Before PATE, NASE, and BAHR, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal of claims 60, 61, 63-68, 70-72 and 74-79. Claims 113 and 114, the other remaining claims in the application, were allowed in the examiner's answer.

The claimed invention is directed to an access port designed to be implanted in a patient's body. Such a device is designed to provide a reservoir which can be filled or emptied by a cannula or needle passed through a self-sealing septum. Appellants' access port device is comprised of an upper body part, a lower body part and a self-

sealing septum between the upper body part and the lower body part with the self-sealing septum forming a portion of the exterior surface of the device.

The reference of record relied upon by the examiner as evidence of lack of novelty is:

Dalton	4,857,053	Aug. 15, 1989
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Claims 60, 61, 63-68, 70-72 and 74-79 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dalton. According to the examiner, Dalton discloses an access port device having titanium mesh upper and lower body portion with a septum of relatively soft silicone rubber.

OPINION

We have carefully reviewed the rejection on appeal in light of the arguments of appellants and the examiner. As a result of this review, we have determined that the applied prior art does not establish that the claimed subject matter lacks novelty. Therefore, the rejection on appeal is reversed. Our reasons follow.

Turning to the Dalton disclosure, it is our finding that the detailed description of the Dalton patent discusses two complimentary inventions. The first invention is the matrix septum material which is discussed from the middle of column 2 down through line 15 of column 6. Afterwards, Dalton discloses an access port device which makes use of the septum material. We note that when Dalton discloses the access port device, the construction of the device in column 6 and in the examples includes a

coating of a sealing layer or potting layer of silicone rubber 66. Thus, it is our view that whenever Dalton contemplates construction of an access port, the septum material is coated with a potting or sealing layer 66. Dalton never expressly discloses an access port device lacking the sealing layer.

We note that the examiner quotes column 6, lines 9-15. In our view, this portion of the specification merely teaches that the matrix septum material per se, may be coated or un-coated when used in certain applications in the body. This quoted portion does not state, however, that the drug delivery access port is such an application that can be utilized un-coated.

REVERSED


JENNIFER D. BAHR
Administrative Patent Judge

WFP/lbg

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